IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2007

CORAM:

THE HONOURABLE MR.JUSTICE F.M.IBRAHIM KALIFULLA
AND
THE HONOURABLE MRS.JUSTICE R.BANUMATHI

Writ Appeal Nos.891 to 893 of 2007

The Secretary,
Tamil Nadu Public Service Commission
Omandurar Government Estate,
Chennai 600 002. ... Appellant in all WAs/2nd Respondent

Vs.

R.Nagarajan ... 1st respondent in W.A.No.891/2007
S.Manual Arasu ... 1st respondent in W.A.No.892/2007
Rajan ... 1st respondent in W.A.No.893/2007

2.Government of Tamil Nadu,
rep. By Secretary,
Home (Courts) VI,
Secretariat, Chennai - 9. ... 2nd Respondents in all WAs.

Appeals filed against the order passed by this Court dated 21.06.2006 in WP.No.11234/04 & 27.04.2006 passed in W.P.No.6085/2004; and, 9823/2004 respectively.

WP.No.11234 of 2004 :

Writ Petition filed under Article 226 of the Constitution of India prayed this Court to issue Writ of Mandamus directing the respondents to appoint the petitioner as the Assistant Public Prosecutor Grade - II in the Tamil Nadu General Service.

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WP.No.6085 and 9823 of 2004 :

Writ Petition filed under Article 226 of the Constitution of India prayed this Court to issue a Writ of Mandamus to direct the respondent to appoint the petitioners as the Assistant Public Prosecutor Grade - II in the Tamil Nadu General Service as per Memorandum No.6280/OTD/C1/2000 dated 09.11.2001 issued by the Second Respondent respectively.

For appellant : Ms.CNG Ezhilarasi
For Respondents : Mr.R.Subramanian for R-1
Mr.V.Manoharan, Govt. Advocate, for R-2

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COMMON JUDGMENT

Aggrieved by the order directing the Appellant/Tamil Nadu Public Service Commission [TNPSC] to appoint respondents 1 as Additional Public Prosecutor [Grade II], TNPSC has preferred these appeals. Since common points have been raised for consideration, all three writ appeals shall stand disposed of by this common order.

2.Brief facts which gave rise to the present appeals are as follows:-

TNPSC in its notification dated 04.12.2000, called for application from candidates for appointment by direct recruitment against 55 vacancies in the post of Additional Public Prosecutor [Gr.II]. In response to the advertisement, respondents appeared for the written examination on 10.03.2001 and 11.03.2001. The respondents have also appeared for the interview on 31.10.2001. 53 candidates were selected for the said post and two vacancies in the category of ST Reserve was not filled. The respondents were informed that their names have been included in the reserve list, which would be in force until next list of selected candidates for the post is drawn up. Two among the selected candidates viz., M/s.Jeyamangalam [S.C. (General)] and Ravi [B.C.(General)] did not join duty as they were simultaneously selected for the post of Civil Judge (Junior Division/ Judicial Magistrate). In their places, by operating the reserve list as per the Rules, Baskaran, who stood 1st in S.C.[General] and V.Loganathan, who stood 1st in B.C.[General], were allotted for appointment as Additional Public Prosecutor, Grade II.

3.Case of the respondents is that their names were included in the reserve list which will have to be in force for selection, in the event of selected candidates failing to join duty. The grievance of the respondents is that they were not appointed even though there were vacancies, three candidates joined and subsequently left.

4.By two separate orders, learned Single Judges have held that "when two candidates have joined and left service by virtue of their selection as Civil Judges, the petitioners who are included in the reserve list, should have been considered for those vacancies". The learned Judges directed TNPSC and Government to appoint the Writ Petitioners in those resultant vacancies.

5.Though the writ appeals were filed in September 2006, for one reason or other, immediate steps were not taken for getting the appeals numbered. In the mean time, advertisement was issued inviting applications for filing up Additional Public Prosecutor Grade II Post, on 27.05.2007. The respondents have filed Contempt Petitions 260 and 261 of 2007. In the said contempt proceedings, the learned Additional Government Pleader sought two weeks time to implement the orders of the Court. In the mean time, steps were taken and the delay in filing the writ appeals was condoned and the appeals were numbered and that is how all three appeals are before us.

6.Ms.Ezhilarasi, the learned Counsel for the TNPSC has submitted that the second proviso to Rule 10(a)(i) of the Tamil Nadu State and

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Subordinate Service Rules, provides for appointing the reserve list candidates in the place of selected candidates, in their respective category, only if the selected candidates did not join duty. The learned Counsel tried to persuade us by submitting that the Writ Petitioners could not be appointed in the resultant vacancies because the three candidates joined, and subsequently left/resigned and Rule 10(a)(i) does not provide for filling up such resultant vacancies. The learned Counsel further submitted that as per the notification dated 21.12.2004, 22 eligible candidates were appointed. Drawing our attention to the recent notification dated 27.05.2007 for filling up 44 vacancies, the learned Counsel has submitted that recruitment process is going on and as such, there is no vacancy to appoint the Writ Petitioners.

7.Contending that panel of selected list prepared in 2002 got expired and the learned Judges ought not to have issued Writ of Mandamus directing appointment of respondents as Additional Public Prosecutors, the learned Counsel placed reliance upon 2007(4) SLR 19 [State of U.P. And Anr. v. Nidhi Khanna and anr.].

8.Countering the arguments, the learned Counsel for the Writ Petitioners submitted that the candidates in the reserve list have indefeasible right to be appointed, if the candidates do not join duty. It was further submitted that the expression "Selection" should be given a meaningful interpretation so as to advance the intention in framing the Rules. It was further submitted that Writ Petitioners are to be appointed in the resultant vacancies either for the non-joining of selected candidates or after joining, left/resigned the job.

9.Admittedly, Writ Petitioners have been placed in the reserve list as noted below :-

Candidate name : Manual Arasu
Category Sl.No.
General Turn (G) 3
Backward Class (G) 2
Backward Class (W) 2

Candidate name : S.Rajan
Category Sl.No.
MBC/DC (G) 2
MBC/DC (W) 2

Candidate name : R.Nagarajan
Category Sl.No.
Scheduled caste (G) 2

10.Two among the selected candidates viz., M/s.Jeyamangalam [S.C. (General)] and Ravi [B.C.(General)] did not join duty as they were simultaneously selected for the post of Civil Judge (Junior Division/Judicial Magistrate I Class). By operating the reserve list, as per the Rules, Baskaran, who stood 1st in S.C.[General] and V.Loganathan, who stood 1st in B.C.[General] were allotted for appointment as Additional Public Prosecutor, Grade II.

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11.Three selected candidates - E.Bakthavatchalam [General Turn (General)]; G.M.Vasanthi [General turn (General)] joined the post, left the services and joined as Civil Judges. One K.Sathasivam (MBC/DC)[W] had resigned from service. The main point raised is, in the resultant vacancies arising out of three candidates joined and subsequently left/resigned, whether the Writ Petitioners are to be appointed. Contention of TNPSC is that Rule 10(a)(i) cannot be operated in cases of candidates who joined and subsequently left/ resigned. What is urged is strict interpretation of proviso to rule 10(a)(i); Rule 10(a)(i) which reads as under :-

> "Provided further that the reserve list of successful candidates shall be in force until the regular list of successful candidates is drawn up subsequently; and that candidates shall be allotted from such reserve list for the vacancies in the place of those who have not joined duty".

12.Though 10(a)(i) provides for allotment from reserve list for the vacancy in the place of those who have not joined duty, it cannot be strictly interpreted so as to exclude resultant vacancies caused due to candidates joined and subsequently left/resigned. The very purpose of Subordinate Service Rules is to sub-serve the interest of the public and the process of selection. No doubt a candidate has indefeasible right to be appointed for the post, but when the Writ Petitioners have been placed in the reserve list, it is a fallacy to argue that they cannot be appointed in the resultant vacancies. We are of the view that if such interpretation is to be adopted, the expression "such reserve list will be in force .... until the drawal of next selected list by the commission", would defeat the intention of the Legislature. We are of the view that a meaningful interpretation of rule 10(a)(i) would sub-serve the interest of the public. In fact, having noticed the anomaly, the Government has issued amendment to rule 2 of Part I and Rules 10(a)(i)(i) and 22(d) under Part II of the General Rules for the Tamil Nadu State and Subordinate Services to the effect that "the reserve list shall be operated even against the vacancies caused due to the fact that the candidates have joined duty but left thereafter while the reserve list is in force". The learned Counsel for the Commission has submitted that the above amendment has only prospective effect and it cannot be applicable to the Writ Petitioners.

13.Three candidates have joined and left only to join as Civil Judges [Junior Division]. The other candidate Sathasivam has resigned from service. Having regard to the facts and circumstances of the case, the learned Judges allowed the Writ Petitions, directing appointment of Writ Petitioners when there was resultant vacancies.

14.It is to be noted that Appointing Authority viz., Government has not preferred any appeal. As held in AIR 1987 SC 169 [Miss Neelima Shangla v. State of Haryana and ors.], duty of Public Service Commission is only to make available to the Government a complete list of qualified candidates arranged in order of merit. It is the Government who strictly appoints in the order in which they have been placed by the Commission as a result of the examination. When there are resultant vacancies, TNPSC

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cannot contend that the selected list prepared in 2002 got expired. In fact, while issuing notification inviting applications for 44 vacancies of Additional Public Prosecutor Grade II, it was notified that "the recruitment of the posts is subject to the result of various cases filed in the High Court Madras, which are still pending". Having said so, the appellant is not justified in contending that at present there is no vacancy. This is all the more so, when the Government and TNPSC had taken time in the contempt proceedings for implementing the order.

15.As a result of our above discussion, we find no reason to interfere with the directions issued in the Writ Petitions and these writ appeals have no merits and are liable to be dismissed.

16.In the result, we confirm the order directing appointment of the Writ Petitioners and the writ appeals are dismissed. Consequently, M.P.No.2/2007 is also dismissed. No costs. We further direct the appellant Commission to include the names of the Writ Petitioners in 1998-2002 list of candidates selected for appointment as Additional Public Prosecutor Grade II in the Tamil Nadu General Services. The appellant and the second respondent are directed to comply with the directions of the learned single Judge within four weeks from the date of receipt of a copy of this Judgment.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1.The Secretary,
Home (Courts) VI Department,
Secretariat, Chennai - 9.

2. The Secretary,
Tamil Nadu Public Service Commission
Omandurar Government Estate,
Chennai - 2.

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3 CC To Mr.R.Subramanian, Advocate, SR NO.53675.
1 CC To M/s.C.N.G.Ezhilarasi, Advocate, SR NO.53903.
1 CC to the Government Pleader, SR NO.43663.

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RVL 29.08.2007

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